



January 8, 2001

Mr. Chase Palmer  
Palmer Law Firm, Inc.  
Attorneys at Law  
P.O. Drawer M  
Marshall, Texas 75670

OR2001-0069

Dear Mr. Palmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142990.

The City of Marshall (the "city") received a request for the patrol car videotape for the entire shift of a specified police officer that occurred on October 18, 2000. You inform us that pursuant to a telephone conversation, the requestor has narrowed the request to encompass only the portion of the videotape that pertains to a specific arrest that occurred during the identified shift. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body

must provide the requestor within a reasonable time but not later than the 10<sup>th</sup> business day after the date of receiving the written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). Otherwise, the requested information is presumed to be public information. Gov't Code § 552.302.

You state that the city received the request for information on October 19, 2000. Accordingly, the city's deadline for providing the requestor with the written statement and the copy of the city's communication to the attorney general described above expired ten business days later on November 2, 2000. *See id.* § 552.301. However, it is apparent that the city failed to provide the requestor with a copy of the city's communication to the attorney general required by section 552.301(d)(2). Therefore, the city failed to comply with all of the requirements prescribed in section 552.301.

You inform us by letter dated November 8, 2000 that pursuant to a telephone conversation which allegedly occurred on that same date between you and an unspecified member of this office's staff, you were advised that a letter dated October 25, 2000 which was sent from the city to the requestor was sufficient to satisfy the notice provisions of section 552.301(d). It is unnecessary for this office to determine whether your November 8, 2000 letter accurately depicts information conveyed over the telephone to you by this office because by the time the alleged telephone conversation took place on November 8, 2000, the city's 10-day deadline for complying with both prongs of section 552.301(d) had already past. Therefore, the city's failure to comply with section 552.301(d) was neither caused nor at all affected by any conversation that may have occurred on November 8, 2000. Consequently, absent a compelling reason to withhold the requested information, the information must be released.

This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). You argue that the submitted information is excepted under sections 552.108 and 552.119 of the Government Code. Your argument regarding section 552.108 does not present a compelling reason to withhold the requested information. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). However, your argument regarding section 552.119 concerns third party interests and therefore may present a compelling reason to withhold the information. Therefore, we address your argument regarding section 552.119.

Section 552.119 excepts from public disclosure a photograph of a peace officer, that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has determined that this provision excepts such photographs from disclosure without the need for any specific showing that release of the photograph would endanger

the life or safety of the officer. Open Records Decision No. 502 (1988). Most of the submitted videotape depicts several peace officers, and there is no indication that any of the exceptions to section 552.119 applies. Therefore, pursuant to section 552.119, unless those peace officers have given their consent to release of the videotape, the city must withhold the videotape from disclosure but only to the extent that the video tape necessarily depicts the peace officers in a manner that reveals their identities.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

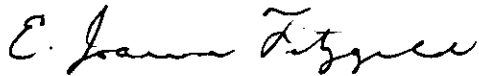
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joanna Fitzgerald".

E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/er

Ref: ID# 142990

Encl: Submitted documents

cc: Ms. Karla DeLuca  
Managing Editor  
The Marshall News Messenger  
309 E. Austin Street  
Marshall, Texas 75670  
(w/o enclosures)